

**REMARKS**

Favorable reconsideration of this application as presented herein is requested. Claims 1-98 are pending in the present application. In the above amendments, claims 32, 65, and 66 have been amended.

In the Office Action mailed July 9, 2004, the Examiner rejected claims 1-41, 51-55, 65-75, and 85-89 under the judicially created doctrine of obviousness-type double patenting and objected to claims 42-50, 56-64, 76-84, and 90-98 as being dependent upon a rejected base claim.

Applicants respectfully respond to this Office Action.

**Claim Rejections/Double Patenting**

The Examiner has rejected claims 1-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-45 of co-pending Application No. 09/892,278. Applicants in response have filed a terminal disclaimer to obviate the basis for rejecting claims 1-31.

The Examiner has also rejected claims 32-41, 51-55, 65-75, and 85-89 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-45 of co-pending Application No. 09/892,278 in view of U.S. Patent No. 6,512,933 to Kalofonos et al.

The rejection contends that Kalofonos teaches a storage medium coupled to the processor and containing a set of instructions executable by the processor, determines a forward link de-rating value for at least one sector in the subscriber station's list, and directs communication between the subscriber station and said at least one determined forward link de-rating value.

In order to overcome this rejection, claims 32, 65, and 66 have been amended to emphasize that credits are assigned to each sector in the subscriber station's list. As mentioned by the Examiner, the co-pending Application No. 09/892,278 and Kalofonos, alone or in combination, fails to teach assigning credits to each sector in the subscriber station's list except the sector currently serving the subscriber station in accordance with said de-rated forward link quality metric. The credits are accumulated in accordance with the forward link quality metric

and the reverse quality metric in a Credit Accumulation phase. (See Applicants' Specification, p.24, par.1107.)

For the reasons mentioned above, claims 32, 65, and 66 are not rendered unpatentable by co-pending Application No. 09/892,278, alone or in combination with Kalofonos. Claims 33-41, 51-55, 67-75, and 85-89 depend from claims 32, 65, and 66 and therefore include all the limitations of those independent claims. Since the co-pending Application No. 09/892,278 and Kalofonos references do not render claims 32-41, 51-55, 65-75, and 85-89 unpatentable, Applicants respectfully submit that the rejections thereof be withdrawn by the Examiner.

Claim Objections

The Examiner objected to claims 42-50, 56-64, 76-84, and 90-98 as being dependent upon a rejected base claim. These objections have become moot since claims 32, 65, and 66 have been amended.

**REQUEST FOR ALLOWANCE**

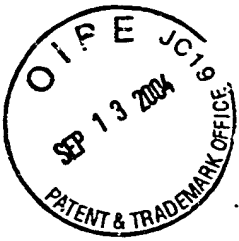
In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: 9/8/2004

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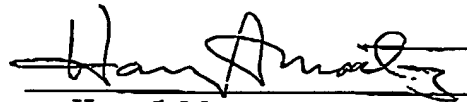
**BEFORE THE OFFICE OF ENROLLMENT AND DISCIPLINE  
UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Expires: May 5, 2005**

  
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